

EXHIBIT 11

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**IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
DAVIS COUNTY, STATE OF UTAH, FARMINGTON DEPARTMENT**

In the matter of the marriage of:

LAUREN R. MARSH,

and

KIRK RUSSEL MARSH.

**VERIFIED REPLY TO KIRK RUSSEL
MARSH'S *MEMORANDUM OPPOSING
MOTION TO ENFORCE ORDER AND
FOR SANCTIONS* AND IN FURTHER
SUPPORT OF *MOTION TO ENFORCE
ORDER AND FOR SANCTIONS***

Civil No.: 184701031

Commissioner: Wilson

Judge: Edwards

COMES NOW Lauren Marsh Zimmer (hereafter "Lauren" or "Mother"), by and through her attorney, Kristy Hanson, and submits her reply to Kirk Russel Marsh's (hereinafter "Russel" or "Father") *Memorandum Opposing Motion to Enforce Orders and for Sanctions* and in further support of *Motion to Enforce*.

RESPONSE TO FATHER'S OPPOSITION

Child Support

Father appears to be making an argument that the current child support order was "illegal." Despite this claim, the current child support order is the controlling order in this matter. Failure to follow court orders is not the proper avenue to seek his alleged redress. The issue of Father's

purported “illegality” of the child support order is not before the Court on this present *Motion to Enforce Order and for Sanctions*. Despite Father’s excessive filings, the matter is quite simple. There is an order requiring Father to pay Mother \$700 a month in child support. By his own admission, Father indicates that “in truth Russel has paid Lauren \$0 since the Court issued the *Supplemental Decree of Divorce* in 2019.” Father also states “Lauren has *never* received any payment of any form from Father.” Mother is unsure what more evidence she could present to support a finding of contempt other than Father’s own admissions that he has not complied with current court orders. He should be held in contempt for willful failure to follow this Court’s orders.

Based on Father’s *Memorandum*, Father also attempts to assert the defense of inability to comply with the court orders. The Utah Supreme Court has previously held that the inability to pay defense “is only effective where the person charged exercises due diligence towards compliance.” *Kessimakis v. Kessimakis*, 580 P.2d 1090, 1092 (1978). Father has not exercised due diligence towards compliance. He indicates that he has paid \$0 since the entry of the controlling court orders. Mother is only aware that she historically received payments from a bank account with the account holder name “Kirk Marsh.” Both Russ and his father have the same name and Mother knew Father to bank at this financial institution. Mother did not know that she was receiving payments from Russ’s father. Regardless, however Father decided to pay his child support obligation is his prerogative. If he chose to ask his parents to make the payments that is not Mother’s concern. Father was released early from prison in fall 2020 on provisions of home confinement. Father also states “the federal judge in Russel’s criminal case released Russel early from Supervised Release.” Instead of securing employment to satisfy his ongoing support obligations, Father chose to “pursue a PhD.” Father has been released from prison for nearly five years and still alleges that he does not have the ability to secure employment. He has provided no evidence to support any attempts to find a job or seek

employment in approximately five years since his release from prison. As such, Father has not exercised due diligence towards compliance and cannot assert an inability to pay defense.

Father states that the payments made on his behalf ceased because of Lauren “held the children ransom... costing Kirk \$1000 to reschedule Christmas plane tickets.” This is completely fabricated. Contrary to his assertion in paragraph 15(a), in December 2023, Father purchased plane tickets that were **not** during his scheduled Winter Break parent-time pursuant to the *Supplemental Decree of Divorce*. Mother told Father that she intended to follow the parent-time orders in the *Decree*, which resulted in Father incurring changed ticket fees for his own failure to abide by the parent-time orders. In retaliation, Father ceased to have his support obligation payments made to Mother.

It is important for the Court to note that Father repeatedly calls his child support obligation “illegal” and states that Mother has “illegally” collected large sums of money from his family. Unlike Father, Mother has not done anything illegal. There is a current court order which requires Father to pay child support and share in insurance premiums and out-of-pocket medical costs. There is nothing illegal about that. In addition to stealing millions of dollars several years prior, Father has continued his illegal behaviors by refusing to follow this Court’s orders.

Insurance Premiums

As evidenced by Table 3 of Mother’s *Declaration*, the insurance premiums owed by Father are from January 2024 to November 2024. No children have been added to the healthcare premium since January 2024. The portion owed by Father in this Table includes the adjustment for any and all new children covered on the same plan. As of the date of the filing of this *Reply*, Father owes \$1,800 in past due premiums for the minor children, including March 2025.

Medical Expenses

Despite failing to file a counter-motion to enforce, Father also seemingly asserts that Mother is in violation of court orders by not ensuring that our daughters' financial needs are provided for or are a priority as she denies the children braces or therapy because "Russel has no ability to pay." This is absurd logic. Insinuating that Mother is non-compliant because she doesn't cover Russel's ordered share of expenses is ridiculous. In fact, Mother has covered Russel's ordered share of medical expenses as he has failed to pay such expenses. In particular, Mother has paid in full for prescription medications, braces, doctor appointments, and therapy costs since Father has refused to reimburse her according to the controlling orders, as evidenced by Table 4 of her *Declaration in Support of Motion to Enforce*. Additionally, two of the parties' minor children are currently receiving orthodontic care that Father has specifically agreed to and is ordered by this Court to pay, and still refuses to pay for his equal share. Mother paid \$940 to cover Father's share for one of the minor children as the orthodontist cannot remove the braces until the amount is paid in full. He also owes the child's orthodontist \$1,900 for his share of orthodontist expenses for the parties' other child.

Since the filing of Mother's *Declaration of Support*, Mother has incurred additional medical expenses (including orthodontia treatment) that should be equally split by Father, pursuant to the controlling orders. ***See Exhibit 19, Evidence of Additional Medical Expenses.*** As of the date of the filing of this *Reply*, Father's share of medical expenses is \$2,297.65. It is equally irrational for Father to state that "Lauren has not made the daughter's needs a priority, financial or otherwise" when he has admitted to paying Lauren \$0 since the entry of the *Supplemental Decree of Divorce* in 2019. This is merely an attempt by Father to mitigate his repeated failures to abide by this Court's orders.

Communication

The irony in Father's hypocritical response to failure to follow communication provisions in current court orders is not lost. Father uses Dana Emmons to evade responsibility for his failure to

respond to Mother's attempts to communicate and then immediately attempts to discredit Dana Emmons for her letter indicating that he disparaged Mother in front of the children. He cannot have it both ways. This is indicative of Father's historical behavior to refuse to accept responsibility for his own actions and to cast blame to those around him. Furthermore, Father raises claims against Mother, but he has filed no countermotion, so he has no claims before the Court.

It is interesting that the crux of Father's argument is that the Court has sent a strong message that "it will break laws, statutes, guidelines and ethics" to order him to nominally provide financial support to the parties' three children. Once again, it is not Father's own criminal actions that have placed him in this position, but according to him it is the Court's "illegal" and unethical behavior. Father's *Memorandum* is riddled with fabrications meant to deflect his own poor choices. Mother strongly denies that she disparages Father in front of the children or alienates them from him. She encourages the minor children to develop a healthy relationship with Father, including sitting with him at events and exercising virtual parent-time.

Mutual Restraining Order

Father's response to his failure to abide by the mutual restraining order is comical. He would have the Court believe that an unknown third party would impersonate him on Instagram, use his full name and photo, retain full copies of private letters that Father wrote, publicize them on social media, and state "for my girls, that they may always know what's important." This is ridiculous. Father believes that this Court is naive enough to believe that the "girls" referenced in the bio are "friends of the account owner" and not the parties' minor children. For what purpose would friends of the alleged account owner care about Father's intimate letters to Mother while he was in prison? If Father wants to maintain this absurd fabrication, he should file a report with Instagram and the police for identify theft to have the account disabled. Father should be held in contempt.

Standard for Contempt

As mentioned herewith, Father cannot employ an inability to pay defense as he has not exercised his due diligence with compliance. Father has not even paid the \$30 a month in child support that he believes he should pay. Father is refusing to work because he does not want the federal government to garnish his wages for the amount that he owes in restitution relating to his criminal case. By his own admission, he has paid \$0 in any support to Mother since the entry of the *Decree*. This is not a demonstration of due diligence towards compliance. Lauren has never told the minor children that Father would go back to prison for not paying child support. Mother should not have to express gratitude for Father's compliance with court orders. Compliance with court orders is an expectation, not an invitation.

Mother filing for divorce had nothing to do with the financial instability of being married to a felon, nor her supposed desire to have a "fourth dishwasher in a custom mansion." Father is vindictive and angry that Mother filed for divorce because of his inability to show remorse, habitually selfish behaviors, repeated lies, and failure to take accountability for his own choices. Mother only states this to provide the Court with background information as to why Father is so offensive and immature in these filings.

CONCLUSION

Mother asks that Father be held in contempt for his clear violations of the *Supplemental Decree of Divorce* and *Amended Supplemental Parenting Plan*. Mother requests the following judgments:

1. A judgment for \$10,500 for past due child support from January 2024 through March 2025.
2. A judgment for \$1,800 for one-half of the costs of medical and dental insurance from January 2024 through March 2025.

3. A judgment for \$2,297.65 for one-half of all medical costs to be shared between the parties from December 2023 through February 2025.
4. A judgment awarding her interest for all arrears that Father owes at the federal post-judgment interest rate of January 1, 2024, plus 2% pursuant to U.C.A. §15-1-4(3)(a). The post-judgment interest rate at the time Mother filed her *Motion to Enforce* was 4.81%. Therefore, pursuant to U.C.A. §15-1-4(3)(a), Mother requests 6.81% interest on the judgments for past-due amounts.
5. A judgment awarding her all attorney fees and costs, pursuant to U.C.A. §81-1-203(2) in being forced to bring this present *Motion to Enforce*, supporting documents, and responding to Father's nonsensical filings.
6. Mother requests this Court impose other sanctions consistent with U.C.A. §§81-1-203(2) and 78B-6-310, deemed appropriate for Father's refusal to comply with previous Court orders.

DATED and SIGNED this 10th day of March, 2025.

/s/ Kristy L. Hanson
KRISTY L. HANSON
Attorney for Lauren Zimmer

VERIFICATION

I declare under the laws of Utah that I have read the foregoing document and that the facts contained in the Relevant Background Facts section herein are true and correct to the best of my knowledge and belief.

DATED and SIGNED this 10th day of March, 2025 at Utah County, Utah.

/s/ Lauren Zimmer – signed w/ email permission
LAUREN MARSH ZIMMER

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MACARTHUR, HEDER & METLER, PLLC, 4844 North 300 West, Third Floor, Provo, Utah 84604, and that in said capacity and pursuant to Rule 5(b), Utah Rules of Civil Procedure, a true and correct copy of the foregoing document was served upon the following on this 10th day of March, 2025:

PARTY	METHOD OF SERVICE
Kirk Russel Marsh kirkrussel@gmail.com <i>Respondent</i>	☐ Hand-delivered ☐ U.S. Mail ☐ Fax ☒ E-Mail ☐ Utah Court Electronic Filing System

/s/ Mickala Mahaffey

EXHIBIT 12

[REDACTED]

[REDACTED]

[REDACTED]

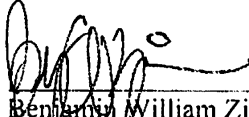
[REDACTED]

[REDACTED]

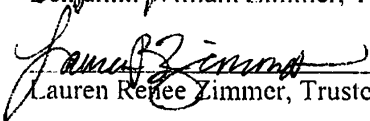
[REDACTED]

In Witness Whereof, the said, **Grantor**, hereunto set by hands and seals this 6th day of December, 2024.

The Zimmer Family Trust dated November 18, 2020



Benjamin William Zimmer, Trustee

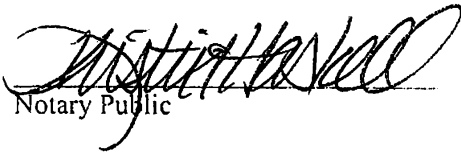


Lauren Renee Zimmer, Trustee

STATE OF UTAH
COUNTY OF UTAH

On this 6th day of December, 2024, before me Kristin Haskell, a notary public, personally appeared Benjamin William Zimmer and ~~Lauren Renee Zimmer~~, Trustees of The Zimmer Family Trust dated November 18, 2020, proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to this instrument, and acknowledged he/she/they executed the same.

Witness my hand and official seal


Notary Public



ENT 86535:2024 PG 1 of 2
ANDREA ALLEN
UTAH COUNTY RECORDER
2024 Dec 09 03:55 PM FEE 40.00 BY LM
RECORDED FOR Real Advantage Title Insura
ELECTRONICALLY RECORDED

After Recording Return To:

Mail Tax Notices To:

Benjamin W. Zimmer

12000 N. 4th St. Suite 110

11111 S. Main St. Suite 100

File Number: 24-24230-KMH

Parcel ID: 50-505-0000

Warranty Deed

Know All Men By These Presents that , **Benjamin W. Zimmer, a married man**, (henceforth referred to as "Grantor") of [REDACTED], for Ten Dollars (\$10.00) and Other Good and Valuable consideration paid, grant to **Michael R Cahill, as Trustee of the General Holdings Trust dated September 11, 2020**, (henceforth referred to as "Grantee") of **7371 Prairie Falcon Road, Las Vegas, NV 89128**, with **WARRANTY COVENANTS**:

Property 1:

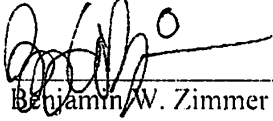
[REDACTED] SECTION, T14S R1E, according to the official plat thereof, recorded in the office of the County Recorder of Utah County, Utah.

Tax Parcel #: [REDACTED]

Subject to current general taxes, easements, restrictions, rights of way and reservations appearing of record.

(This space left blank intentionally)

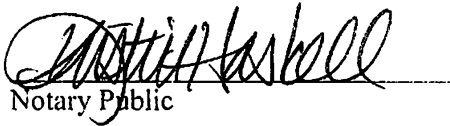
In Witness Whereof, the said, **Grantor**, hereunto set by hands and seals this 6th day of December, 2024.


Benjamin W. Zimmer

STATE OF UTAH
COUNTY OF UTAH

On this 6th day of December, 2024, before me Kristin Haskell, a notary public, personally appeared Benjamin W. Zimmer, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.

Witness my hand and official seal


Notary Public



WARRANTY DEED

EXHIBIT 13



Russel Marsh <kirkrussel@gmail.com>

Health insurance for Natalie, Isla, and Isabelle

4 messages

Lauren Zimmer <laurenzimmer@gmail.com>
To: Russel <kirkrussel@gmail.com>

Wed, Jan 27, 2021 at 3:46 PM

Hi Russ,

I want to update you on the girls' health insurance. For the last (almost) 3 years, the girls have been covered by Medicaid. This has covered all their health and dental appointments, as well as prescriptions.

Starting February 1, 2021, the girls will no longer be covered by Medicaid. They will be on a private Select Health group insurance plan that covers me, Ben, [REDACTED] and Ben's two daughters. We have a high deductible plan, and as such, have a very favorable monthly premium for all 7 individuals.

Our supplemental decree of divorce outlines the plan for sharing medical and dental insurance costs in paragraph 9:

"The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the child's portion of insurance unless the court finds good cause to order otherwise.

The parent who provides the insurance coverage may receive credit against the base child support award or recover the other parent's share of the child's portion of the premium. If the parent does not have insurance but another member of the parent's household provides insurance coverage for the child, the parent may receive credit against the base child support award or recover the other parent's share of the child's portion of the premium.

The child's portion of the premium is a per capita share of the premium actually paid. The premium expense for a child shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of children in the instant case."

To go through the numbers, the monthly premium total is \$1099.64.

Divided by 7, it breaks down to \$157.09 per person.

Multiplied x3 (for Natalie, Isla, and Isabelle) it equals \$471.27.

We are to divide that cost equally, which comes to \$235.63 per month for each of us.

The premiums are due monthly on the 1st. Starting February 1, please include the \$235.63 with your monthly child support payments.

Please let me know if you have additional questions.

Sincerely,
Lauren

Russel <kirkrussel@gmail.com>
To: Lauren Zimmer <laurenzimmer@gmail.com>
Bcc: "D. Michael Nielsen" <dmnlaw@q.com>, Kirk Marsh <kirk.d.marsh@gmail.com>

Thu, Jan 28, 2021 at 9:22 AM

Hi, Lauren,

Thank you for the update. Before addressing your insurance payment request, I would like to touch base again about my prior emails.



Russel Marsh <kirkrussel@gmail.com>

Health insurance info

2 messages

Lauren Zimmer [REDACTED]
To: Russel <kirkrussel@gmail.com>

Tue, Feb 2, 2021 at 11:55 AM

Hi Russ,

Here is a copy of the receipt from February's health insurance payment.
In my email on January 28, I incorrectly told you the deductibles were per person. I misunderstood the policy. In reality there is just one family deductible of \$13,800. I hope that information is helpful.

Sincerely,
Lauren



Hi Benjamin,

Your **\$1,099.64** payment to **SelectHealth** has been approved. Thank you.

SelectHealth
5381 S Green Street
Murray, UT 84123

Transaction Information

Transaction Date:	February 1, 2021
Response Message:	Approval (00)
Response Code:	000
Card Type:	VISA
Card Holder Name:	Benjamin Zimmer
Card Number:	*****
Auth Amount:	\$1,099.64

Your payment of \$1,099.64 on 2/1/2021 was APPROVED

This message is for informational purposes only. Please do not reply to this email.

POWERED BY **InstaMed**

www.instamed.com
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1880 John F Kennedy Blvd., Philadelphia, PA 19103

Russel <kirkrusse1@gmail.com>

Wed, Feb 3, 2021 at 3:34 PM

To: Lauren Zimmer <laurenzimmer@gmail.com>

Lauren,

Thank you for forwarding that information. I also need to see a summary of what the plan covers, what out of pocket expenses are required, any applicable copayments or coinsurance, etc.

While I appreciate your finding a plan for the girls, quite frankly this plan is very high. \$13,800 is the highest possible deductible allowed by law, and the premium is more in line with a much better deductible. I will try to find insurance for our girls at a more affordable rate.

Russ

Case 1:24-cv-00516-PTG-IDD
Aetna CVS Health®
PO Box 981131
El Paso, TX 79998-1131

Document 37-13
415

Filed 10/09/25

Page 5 of 7 PageID#



Please do not send payments to this address.

Benjamin Zimmer

11/05/2024

166496735

Internal Purposes: RM04

Your Monthly Premium Invoice

Your premium payment is due by November 30, 2024. If you've already sent us your full premium payment, please disregard this notice. If you don't pay your premium, this will affect your coverage as of December 01, 2024. Your payment details are the following:

ACCOUNT SUMMARY				
Previous Balance:	\$	525.24	Due Date:	11/30/2024
Payments:	\$	(721.37)	Plan Name:	Bronze 2 HSA: Aetna network of doctors & hospitals + MinuteClinic + Virtual Care 24/7
(Credit Balance):	\$	(-196.13)	Member ID:	101919425600
Current Premiums:	\$	1344.37	Exchange ID:	0002737662
Adjustments:	\$	0.00	Invoice:	24310466151
APTC:	\$	(623.00)	Invoice Date:	11/05/2024
TOTAL AMOUNT DUE:	\$	525.24	Bill Period:	12/01/2024 - 12/31/2024
Balance Forward:	\$	525.24		

Health plans are offered or underwritten or administered by Aetna Health of California Inc., Aetna Health Inc. (Florida), Aetna Health Inc. (Georgia), Aetna Life Insurance Company, Aetna Health of Utah Inc., Aetna Health Inc. (Pennsylvania), or Aetna Health Inc. (Texas) (Aetna). Aetna is part of the CVS Health® family of companies.

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1A.32.374.1 (11/21)

UT

COCO_164129_20241105_1Pg_DX_B1_0001.PDF

Page 1 of 3

Your Monthly Member Detail

Subscriber/Dependent	Exchange ID	Premium	APTC
(S) Zimmer, Benjamin	0002737662	\$436.36	\$623.00
[REDACTED]	0003159069	\$0.00	\$623.00
[REDACTED]	0002964862	\$0.00	\$623.00
[REDACTED]	0002812648	\$190.34	\$623.00
[REDACTED]	0002777564	\$190.34	\$623.00
[REDACTED]	0002356927	\$190.34	\$623.00
(D) Zimmer, Lauren	0002821361	\$336.99	\$623.00
[REDACTED]	0002946891	\$0.00	\$623.00
[REDACTED]	0003332249	\$0.00	\$623.00

Payment Options

- Make a payment by calling **1-844-365-7373 (TTY: 711)**
- Pay by check. Detach and return the portion below with your payment to the address noted below. Please make checks payable to **Aetna CVS Health®**
- Pay online using a credit/debit card or a bank withdrawal by logging into **AetnaCVSHealth.com/payment**
- Pay at any CVS location, excluding CVS at Target, using the barcode below.
- Pay using the QR code below:



What happens if I don't make a payment?

If you fail to pay your premiums when due, you'll lose your insurance coverage. You won't be able to enroll in another health plan until there is a new open enrollment or you experience a qualifying event. And you'll be responsible to pay for medical claims that occur after your coverage ends.

What happens if I pay late?

Premium payments are due in advance, on a calendar month basis. Monthly payments are due before the first day of each month for coverage effective during that month. This means that if any required premium isn't paid before the date it is due, the policy will be subject to a grace period. Refer to your member handbook for details on the grace period that applies to you. During the grace period the policy will stay in force. However, claims may pend for covered services provided to you during the grace period. We'll notify you, as well as providers, of the non-payment of premiums and the possibility of denied claims, if permitted by law, when you're in the grace period.

We're here to help

If you have any questions, please call us at **1-844-365-7373 (TTY: 711)**. We're here Monday through Friday from 8 AM-6 PM local time.

RETURN THIS WITH PAYMENT

Total Amount Due: **\$525.24**
Exchange ID: 0002737662
System ID: 69292896
Payment Due By: **11/30/2024**
Invoice: 24310466151
Invoice Date: 11/05/2024
Bill Period: 12/01/2024 - 12/31/2024
Enrollment Type: I

Benjamin Zimmer
 12037 N 6050 W
 HIGHLAND, UT 84003

SEND PAYMENT TO:

Aetna CVS Health
 PO Box 842920
 Dallas, TX 75284-2920

000000069292896000005252419

-----Cut Here-----Do Not Staple-----Cut Here-----Do Not Staple-----Cut Here-----Do Not Staple-----Cut Here-----Do Not Staple-----Cut Here-----Do Not Staple-----Cut

Pay at the store

Take this payment slip to any CVS Pharmacy® retail location to take advantage of our complimentary cash or credit/debit card payment service.

By accepting or using this barcode to make a payment, you agree to the full terms and conditions, available at www.vanilladirect.com/pay/terms.

Have the cashier scan your barcode. Tell the cashier the amount you would like to load to your account, between \$1 and \$999/day. After successful payment using this barcode, you may retrieve your full detailed e-receipt at www.vanilladirect.com/pay/ereceipt.

Note: This service is not available at CVS Pharmacy Target®. *VanillaDirect Pay is provided by InComm Financial Services, Inc., which is licensed as a Money Transmitter by the New York State Department of Financial Services. NMLS ID # 912772.*



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EXHIBIT 14

Kristy Hanson (9680)
Lesley Johnson (16017)
MACARTHUR HEDER & METLER, PLLC
Attorneys for Lauren Marsh Zimmer
Riverwoods Business Park
4844 North 300 West, 3rd Floor
Provo, Utah 84604
Telephone: 801-377-1900
Facsimile: 801-377-1901
Email: kristy@mhmlawoffices.com
lesley@mhmlawoffices.com

**IN THE SECOND JUDICIAL DISTRICT COURT
DAVIS COUNTY, STATE OF UTAH, FARMINGTON DEPARTMENT**

In the matter of the marriage of:

LAUREN R. MARSH,

and

KIRK RUSSEL MARSH.

FINANCIAL DECLARATION

Civil No.: **184701031**

Judge: **Michael Edwards**

Commissioner: **Christina Wilson**

You must fully and accurately disclose all assets and income in this document and provide attachments. If you fail to disclose all assets and income, you could be subject to sanctions under Utah Rule of Civil Procedure 37. Sanctions can include an award of non-disclosed assets to the other party, attorney's fees or other sanctions.

1. I am providing this form to the other party and (Choose one.):

- ☐ I **am not filing the Financial Declaration with the court** because a hearing about child support, spousal support, property, debts, attorney fees and court costs is not scheduled, or because the court has not ordered me to file it.

I am filing the separate Certificate of Service of Financial Declaration.

- ☒ I **am filing the Financial Declaration with the court** because a hearing about child support, spousal support, property, debts, attorney fees and court costs is scheduled, or the court has ordered me to file it.

I am also filing the separate Certificate of Service of Financial Declaration.

2. I am attaching the following documents, if available:

Tax returns. For the last year before the petition was filed:

- ☐ Attached
☐ Not attached
☒ Doesn't apply

- federal and state income tax returns – personal and for any entities in which I have a majority or controlling interest
- all documents used to prepare the tax returns

Pay stubs or other proof of income. For the 3 months before the petition was filed (or 6 months of back statements for self employment):

- pay stubs
- other proof of all earned and un-earned income

☐ Attached
☐ Not attached
☒ Doesn't apply

☒ I marked some documents above as “not attached” because:

Document	Reason
Taxes	I have no personal income. My tax returns reflect my husband's income which is not relevant in this modification case.
Proof of Income	I have no personal income.

3. **Employment:** (You must attach proof of amounts listed. If the proof is not available, estimate the amount and explain how you reached that amount.)

☒ I am unemployed because:

I am a homemaker.

4. **Gross Monthly Income:** (You must attach proof of amounts listed. If the proof is not available, estimate the amount and explain how you reached that amount.)

☐ I have the following monthly income before tax deductions:
(Print your pre-tax income in the boxes below. For income that changes from month to month, calculate the annual total and divide it by 12 months to list a monthly average.)

Source of income	Monthly amount
Work (Including self-employment, wages, salaries, commissions, bonuses, tips and overtime)	\$
Rental income	\$
Business income	\$
Interest	\$
Dividends	\$
Retirement income (Including pensions, 401(k), IRA, etc.)	\$
Worker's compensation	\$
Private disability insurance	\$
Social Security Disability Income (SSDI)	\$

Source of income	Monthly amount
Supplemental Security Income (SSI)	\$
Social Security (Other than SSDI or SSI)	\$
Unemployment benefits	\$
Education benefits (Including grants, loans, cash scholarships, etc.)	\$
Veteran's benefits	\$
Alimony	\$
Child support	\$
Payments from civil litigation	\$
Victim restitution	\$
Public assistance (Including AFDC, FEP, TANF, welfare, etc.)	\$
Financial support from household members	\$
Financial support from non-household members	\$
Trust income	\$
Annuity income	\$
Other (Describe)	\$
Other (Describe)	\$
Total gross monthly income	\$ 0.00

☒ I have no income because:

I am a homemaker.

5. **Monthly Tax Deductions:** (You must attach proof of amounts listed. If the proof is not available, estimate the amount and explain how you reached that amount.)

☐ I have no monthly tax deductions because I have no income.

☒ I have the following monthly tax deductions.

Type of tax deduction	Amount
Federal income tax	\$
State income tax	\$
Municipal income tax	\$
FICA	\$
Medicare	\$
Total monthly tax deductions	\$ 0.00

6. **After Tax Income**

☐ My monthly income is:

\$ _____	Gross monthly income from section 4
- \$ _____	Minus monthly tax deductions from section 5
= \$ _____	Equals after-tax monthly income

☒ I have no income.

Warning

If you do not fully disclose all assets and income in this document and provide attachments you could be subject to sanctions under Utah Rule of Civil Procedure 37.

Sanctions can include an award of non-disclosed assets to the other party, attorney's fees or other sanctions.

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at **Provo Utah** (city, and state or country).

4/7/2025

Date

Signature ► Lauren Zimmer (signed with email permission)

Printed Name LAUREN ZIMMER

EXHIBIT 15

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

2024 MAR 29 P 4 15

for the

Kirk Russel Marsh

Plaintiff(s)

v.

Michael Edwards

Defendant(s)

Civil Action No.

1:24 CV 516

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Judge Michael Edwards
800 W State Street
Farmington UT 84025

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kirk Russel Marsh
10636 Glenmore Rd
Fairfax VA 22032
(571) 430-9473

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 3/29/24

COPY
Signature of Clerk or Deputy Clerk

SENDER: COMPLETE THIS SECTION Document 5		COMPLETE THIS SECTION ON DELIVERY of 4 Pages	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ Agent ☐ Addressee B. Received by (Printed Name) <u>AK BROWN</u> C. Date of Delivery <u>8-3-24</u> D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below: Case # <u>1:24 CV 516</u>	
1. Article Addressed to: Judge Michael Edwards 800 W State Street Farmington UT 84025 9590 9402 8/3L		3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery	
2. Article Number (Transfer from service label) 9589 0710 5270 1019 8126 36 F... JUL 11, JULY 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

USPS TRACKING # 24-cv-00516-PTG-IDD Document 37-15 Filed 10/09/25 Page 4 of 4
SALT LAKE CITY UT 840
B APR 2024 PM 4 L



9590 9402 8732 3310 5770 84

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Kirk Russel Marsh
10036 Glenview Rd
Fairfax VA 22032

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

2-161936

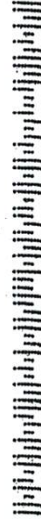


EXHIBIT 16

AGENDA

JUDICIAL CONDUCT COMMISSION MEETING

**Tuesday, 21 May 2024
11:00 a.m.**

**Judicial Conduct Commission
1385 S. State Street
Salt Lake City, Utah 84115**

NO.	ITEM	REPORTING	TAB
1	Welcome, Call to Order, Public Comment	Chair	1
2	Approval of Public Minutes	Chair	2
3	Director's report	Alex Peterson	3
4	Budget	Alex Peterson	4
5	Statistical Report	Alex Peterson	5
6	Motion to Close Public Meeting Approval of Confidential Minutes Confidential Matters	Chair	6
7	Next Meeting	Chair	
8	Other Business	Chair	
9	Adjournment	Chair	

Notice is hereby provided that the JCC will be meeting in person at our anchor location. The public is invited to attend at anchor location address above.

Persons with disabilities who require special accommodations are requested to contact the Judicial Conduct Commission, (801) 468-0021, at least 48 hours before the scheduled meeting date and time.

Tab 2

**MINUTES OF THE PUBLIC PORTION OF THE
JUDICIAL CONDUCT COMMISSION MEETING**

Tuesday, 16 April 2024 at 11:00 a.m.

**Judicial Conduct Commission
1385 S. State Street
Salt Lake City, Utah 84115**

Meeting was conducted at anchor location

Present:

Ms. Cheylynn Hayman, Chair
Sen. Jen Plumb
Sen. Mike McKell (video)
Rep. Brady Brammer
Hon. David Mortensen
Hon. Michael Edwards (video)
Mr. Stephen Studdert
Mr. Mark Raymond
Ms. Georgia Thompson

Excused:

Rep. Doug Owens
Ms. Michele Ballantyne

Staff:

Alex Peterson
Aimee Thoman

Guests / Public:

Justice Diana Hagen

1. **Welcome.** Chair called the meeting to order. The Chair welcomed Hon. Michael Edwards as a new member of the Judicial Conduct Commission. Public comment was allowed, none was given. Justice Hagen administered Oaths of Office to Hon. Michael Edwards and Hon. David Mortensen.

2. **Approval of Minutes.**

Motion: Mr. Raymond To approve the Minutes of the public portion of the 12 March 2024 meeting.
Second: Ms. Thompson
Vote: Unanimous

3. **Director's Report.** Mr. Peterson reviewed the Director's Report, updating the Commission on AJDC / CJEⁱ (x1), JPECⁱⁱ (x0), CCJJⁱⁱⁱ (x0), UCCD^{iv} (x0), AOC^v (x1), and GRAMA^{vi}/Press (x2) monthly requests. Staff working with adjacent agencies to relocate offices to 4th Floor. Staff conducting onboarding of new members. Staff working on annualized training requirements.

4. **Budget.** The staff reported on the FY24 budget through March 31, 2024 with total expenditures to date of \$273,623. Prior year savings resulted in a carry forward balance of \$52,841. The Judicial Conduct Commission has spent 64% of available funds through 75% of current FY. The projected remaining balance including balance from prior years is \$32,755.

5. **Statistical Report.**

Number of complaints filed to date in FY24 / E-complaints	140
Number of cases pending before the Supreme Court	0
Number of cases under formal charges	0
Number of cases under full investigation	6

Number of cases under preliminary investigation	44
Total number of open files	50
Oldest Case	420 days
Average Case age	101 days

In FY24, three (3) Public Actions and two (2) Dismissals with Warning have been issued. Thirteen (13) reconsideration requests received to date.

It has been acknowledged that the greater public access to complaint forms via the online complaint portal has resulted in a significant increased complaint case load with no increase in meritorious complaints submitted. Staff continues working on a loading page for the online complaint portal to emphasize the correct way to file appeals.

6. Closure of Meeting via roll call vote.

Motion:	Rep. Brammer	To close the meeting to the public for the purpose of discussing: the character, professional competence, or physical or mental health of an individual; or investigative proceedings regarding allegations of criminal misconduct; or pending or reasonably imminent litigation; or matters covered by attorney client privilege.
Second:	Mr. Studdert	
Vote:	Unanimous	By roll call

At the conclusion of the confidential portion of the meeting, the meeting was re-opened to the public.

7. Next Meeting and other matters. The Commissioners agreed to conduct a public meeting on 21 May 2024 at the anchor location at 11:00 am. The Chair approved Commissioner electronic attendance.

8. Adjournment.

Motion:	Ms. Hayman	To adjourn.
Second:	Not required	
Vote:	Unanimous	

ⁱ Association of Judicial Disciplinary Counsel / Center for Judicial Ethics

ⁱⁱ Judicial Performance Evaluation Commission

ⁱⁱⁱ Commission on Criminal and Juvenile Justice

^{iv} Utah Council for Citizen Diplomacy

^v Administrative Office of the Courts

^{vi} Government Records Access and Management Act

Tab 3



Alex G. Peterson
Executive Director

State of Utah

JUDICIAL CONDUCT COMMISSION

1385 S. State St., Suite 143
Salt Lake City, Utah 84115
Telephone: (801) 468-0021

MEMORANDUM

TO Judicial Conduct Commissioners

FROM Alex G. Peterson

DATE 16 May 2024

RE Director's Report

- MESSAGE**
1. JCC staff activities that have occurred beyond investigative responsibilities since our last meeting.
 2. Information requests regarding the JCC processes / organization:

AJDC / CJE - 3, JPEC - 0, judicial nominations / CCJJ - 3, UCCD - 1, AOC / judicial retirements - 0 and GRAMA / Press - 1.
 3. Staff working on relocation to 4th Floor in late June. Buildout and re-design proceeds on schedule.
 4. New Oaths of Offices signed and originals sent to Archives.
 5. Staff completing annualized training requirements as Records Officer, new expense reporting and travel management system training, and continuing legal education.
 6. Working with Budget analyst for FY25, implementation of P4P (Pay for Performance), and increasing carry-over fund authorization.

AJDC / CJE is the Association of Judicial Disciplinary Counsel / Center for Judicial Ethics
JPEC is the Judicial Performance Evaluation Commission
CCJJ is the Commission on Criminal and Juvenile Justice
UCCD is the Utah Council for Citizen Diplomacy
AOC is the Administrative Office of the Court
GRAMA is the Government Records Access and Management Act

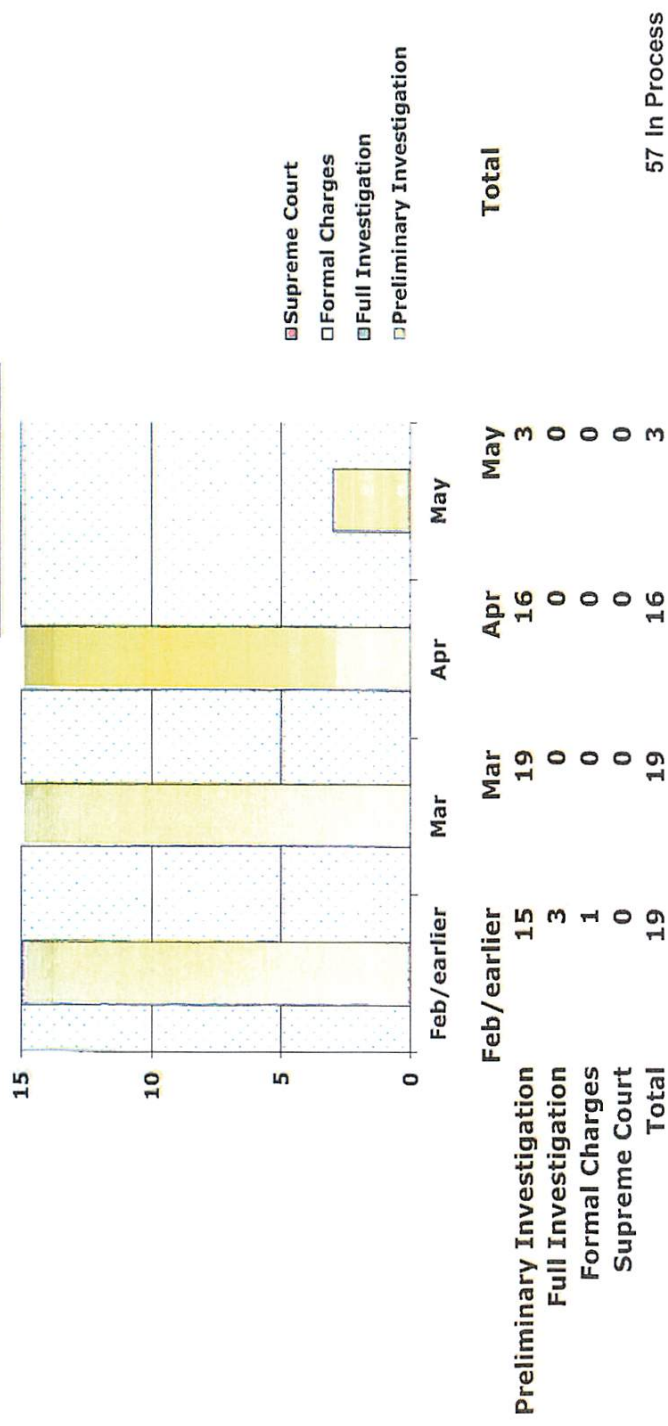
Tab 4

FY 2024 Budget Report - Through April 30, 2024

Description	Amount	Balance
FY 2024 Legislative Appropriation	\$376,100	\$376,100
Estimated FY 2023 Savings Carried into FY 2024	\$52,841	\$428,941
FY 2024 Expenditures through April 30, 2024	\$303,202	125,739
Percent of Current Fiscal Year Passed as of April 30, 2024	83.0%	
Percent of Legislative Appropriation Spent as of April 30, 2024	80.6%	
Percent of Available Funds Spent as of April 30, 2024	70.7%	
Estimated Carry Over From Prior Years	\$52,841.00	
Projected Remaining Balance Including the Balance From Prior Years	\$32,755	
Authorized non-lapsing Balance	\$100,000	

Tab 5

PENDING CASES



New Complaints Received Since 4/16/2024 12
Net Increase/Decrease Since 4/16/2024 7

Oldest Case / Goal / Previous 453 days / 180 days / 420 days
Ave. Case age / Goal / Previous 103 days / 90 days / 101 days
Supreme Court & Formal Charges cases excluded

FY 24 to date
Total Complaints / E-complaints 163
Total Reconsideration Requests 4
Total DWW 2
Total Public Actions 3

EXHIBIT 17

From: Russel kirkussel@gmail.com
Subject: Fwd: DOPL Complaint: Dana Emmons
Date: July 25, 2024 at 3:38 PM
To: Candice Kulbeth candice.kulbeth@gmail.com

----- Forwarded message -----

From: Benjamin Baker <benjaminbaker@utah.gov>
Date: Thu, Jul 25, 2024 at 3:45 PM
Subject: DOPL Complaint: Dana Emmons
To: <kirkussel@gmail.com>

Hi Mr. Marsh,

I received and reviewed your complaint regarding Dana Emmons. As there is pending litigation, DOPL can not investigate your complaint at this time. After your lawsuit has been adjudicated you may refile your complaint and we can look at it at time.

Thank you for your time and concern in this matter.

Take Care,

--

Benjamin Baker I Lead Investigator



**UTAH DEPARTMENT
OF COMMERCE**

Division of Professional Licensing

M: 801-580-3049
Bureau of Investigation
160 E 300 S (Broadway)
Salt Lake City, UT 84114
www.dopl.utah.gov

EXHIBIT 18

STEPHEN OLER (U.S.B. 11740)
Assistant Attorney General
SEAN D. REYES (U.S.B. 7969)
Utah Attorney General
Commercial Enforcement Division
Heber M. Wells Building
Box 140872
Salt Lake City, UT 84114-6741
Telephone: (801) 366-0310
steveoler@agutah.gov

**BEFORE THE DIVISION OF PROFESSIONAL LICENSING
DEPARTMENT OF COMMERCE
STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF
DANA EMMONS
UTAH LICENSE #10143380-3902
TO PRACTICE AS A
MARRIAGE AND FAMILY THERAPIST
IN THE STATE OF UTAH

STIPULATION AND ORDER

CASE NO. DOPL 2024- 226

DANA EMMONS ("Respondent") and the Division of Professional Licensing of the Department of Commerce of the State of Utah ("Division") stipulate and agree as follows:

1. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action.
2. Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.
3. Respondent understands that Respondent has the right to be represented by counsel in this matter, and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter.
4. Respondent understands that Respondent is entitled to a hearing before Utah's Marriage and Family Therapist Licensing Board ("Board"), or other Division Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and

confront adverse witnesses. Respondent understands that by signing this document, Respondent waives the right to a hearing, the right to present evidence on Respondent's own behalf, the right to call witnesses, the right to confront adverse witnesses, and any other rights to which Respondent may be entitled in connection with said hearing. Respondent understands that by signing this document, Respondent knowingly and intelligently waives the right to all administrative and judicial review as set forth in Utah Code Ann. §§ 63G-4-301 through 63G-4-405, and Utah Administrative Code R151-4-901 through R151-4-907. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann. § 63G-4-102(4).

5. Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter.

6. Respondent acknowledges that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document. The Division may release this Stipulation and Order, as well as other information about this disciplinary action against Respondent's license, to other persons and entities.

7. Respondent admits the following facts are true:

- a. Respondent was first licensed as a marriage and family therapist in the State of Utah on or about January 18, 2017.
- b. In October and November 2021, during a therapy session, a client offered to help Respondent move, and Respondent accepted. Using his own truck, the client helped Respondent move her belongings from her home to a storage unit, and from one storage unit to another.
- c. In December 2021, Respondent asked the same client to loan her approximately \$2,000, which the client did. Respondent then asked the client for an additional \$3,000 loan. The client did not loan the additional amount. Respondent paid the loan back.

- d. Respondent did not seek consultation from a colleague, professional association, professional code of ethics, or legal counsel before engaging in the above behavior.
- e. The Division has received statements from three of Respondent's employers that Respondent did not properly create and enter mental health records for her clients.
- f. The Division has received complaints from Respondent's clients stating that Respondent shares too much information about her personal life during therapy sessions.
- g. Although Respondent was in good standing in the Oklahoma when she applied for licensure in the State of Utah, the Division previously disciplined Respondent, in case number DOPL 2017-566, for failing to disclose a former licensing investigation in Oklahoma, in which Respondent accepted a loan from a client.
- h. Respondent desires to surrender Respondent's license to practice as a marriage and family therapist in the State of Utah, along with all residual rights to said license.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a)(1) and Utah Admin. Code R156-60b-502(5), (13); and that said conduct justifies disciplinary action against Respondent's license pursuant to Utah Code Ann. § 58-1-401(2).

9. Respondent hereby surrenders Respondent's license to practice as a marriage and family therapist in the State of Utah along with all residual rights pertaining to said license. Respondent agrees not to reapply for licensure as a marriage and family therapist in the State of Utah for a period of five years from the effective date of this Stipulation and Order. The Division does not guarantee that any future application by Respondent for licensure will be granted. If the Division Director accepts the terms of this Stipulation and Order, Respondent forfeits all rights to practice as a marriage and family therapist in the State of Utah. Respondent understands that Respondent will not receive any refund of license or renewal fees previously paid to the Division.

10. The effective date of this Stipulation and Order is September 30, 2024.

Respondent shall maintain an active license until September 30, 2024, at which time Respondent's license shall be immediately surrendered and Respondent shall cease practicing as a marriage and family therapist in the State of Utah. Respondent understands that this Stipulation and Order is binding, meaning Respondent may not cancel this agreement after it is signed.

11. Upon approval by the Director of the Division, this Stipulation and Order shall be the final compromise and settlement of this non-criminal administrative matter. Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and Respondent waive any claim of bias or prejudgment they might otherwise have with regard to the Director by virtue of having reviewed this Stipulation, and this waiver shall survive such nullification.

12. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe, or affect this Stipulation.

13. If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanctions, in the manner provided by law.

14. Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state.

15. Respondent has read and understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF
PROFESSIONAL LICENSING


JANA JOHANSEN
Bureau Manager

Date: 8/1/24

RESPONDENT

Dana Emmons (signed by counsel with permission)
DANA EMMONS

Date: August 1, 2024

SEAN D. REYES
UTAH ATTORNEY GENERAL


STEPHEN OLER
Counsel for the Division

Date: August 1, 2024

ORDER

THE ABOVE STIPULATION, in the matter of **DANA EMMONS**, is hereby approved by the Division of Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED August 2, 2024

DIVISION OF PROFESSIONAL
LICENSING


MARK B. STEINAGEL

Division Director

or

DEBORAH BLACKBURN

Assistant Division Director

Investigator: Ben Baker

EXHIBIT 19

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION

KIRK RUSSEL MARSH,

Plaintiff,

v.

THE STATE OF UTAH; JUDGE MICHAEL
EDWARDS; DANA EMMONS,

Defendants.

Case No. 1:24-CV-516

Judge Patricia Tolliver Giles
Magistrate Judge Ivan D. Davis

**REPLY SUPPORTING DEFENDANTS JUDGE EDWARDS AND THE STATE OF
UTAH'S MOTION TO DISMISS**

INTRODUCTION

Plaintiff Marsh has failed to meaningfully refute the arguments made in Defendants' Memorandum Supporting Defendants Judge Edwards and the State of Utah's Motion to Dismiss. Significantly, this Court lacks personal jurisdiction over Judge Edwards; the State of Utah is entitled to Eleventh Amendment immunity; and Judge Edwards is entitled to judicial immunity. While not previously addressed, Marsh attempts to bring a petition for habeas corpus, but he is not in custody, and although it was not clear from Marsh's Complaint, Marsh has asserted that the Utah state-court proceeding is ongoing and that he has a petition to modify the child support order pending with that court. Thus, abstention under the *Younger* doctrine is appropriate.

ARGUMENT

1. This Court lacks personal jurisdiction over Judge Edwards.

Marsh cites to the principle that "In cases that may be brought only in federal court, . . . federal courts may exercise personal jurisdiction over a defendant regardless of where the defendant is found."¹ Federal Rules of Civil Procedure Rule 4(k)(1)(C) provides that serving a summons establishes personal jurisdiction over a defendant when authorized by a federal statute. The Securities Act and the Exchange Act both contain language that process may be served "wherever the defendant may be found." 15 U.S.C. § 78aa; 15 U.S.C. § 77v. Accordingly, in an action brought pursuant to such an act, a court may exercise personal jurisdiction over a defendant if the defendant was served with process and has sufficient contacts with the United States. *Sec. & Exch. Comm'n v. Karroum*, No. 117CV0187AJTIDD, 2018 WL 11230398, at *1 (E.D. Va. Feb. 2, 2018) (unpublished).

¹ Pl.'s Opp'n 6, ¶ 18.

None of the statutes Marsh cites implicitly allow the Court to exercise personal jurisdiction in this manner.² That a federal court may have subject-matter jurisdiction over an action does not mean that the court has personal jurisdiction over the defendant. “The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause. . . It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty.” *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). Personal jurisdiction must therefore be established by determining whether Judge Edwards is “subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.” Fed. R. Civ. P. 4(K)(1)(A). Although Marsh states that this is not a suit regarding Virginia law,³ he has made Virginia and its laws relevant by filing in this Court, which sits in Virginia. And as Defendants have previously established, Virginia’s long-arm statute does not reach Judge Edwards and even if it did, exercising personal jurisdiction over Judge Edwards would offend the Due Process Clause as he lacks sufficient minimum contacts with Virginia. Because this Court lacks personal jurisdiction against Judge Edwards, all claims against him must be dismissed. Joining Marsh’s parents as plaintiffs would be futile, as the Court would still lack personal jurisdiction.

2. The State of Utah is entitled to Eleventh Amendment Immunity on all claims.

Marsh claims that Utah’s refusing to address his “concerns at state levels” and “forcing” Marsh to file in federal court constituted a removal to federal court.⁴ While Marsh is correct that a state waives Eleventh Amendment immunity when it removes a case to federal court, he is confused about the procedural process of removal. Pursuant to 28 U.S.C. § 1446, a defendant may remove a civil action from the state court in which it was filed to federal court. Marsh initiated this

² *Id.* at 6–8, ¶ 21.

³ *Id.* at 6, ¶ 19.

⁴ *Id.* at 24, ¶ 50(a).

action in this Court; Defendants did not remove it here. Thus, the State of Utah has not waived its Eleventh Amendment immunity, and the Court should dismiss all claims against it. Joining Marsh's parents as plaintiffs would be futile, as doing so would not affect the State of Utah's immunity.

3. Judge Edwards is entitled to absolute judicial immunity.

Marsh argues that Judge Edwards is not entitled to absolute judicial immunity because the decisions Judge Edwards made in presiding over the divorce proceeding were taken in the clear absence of jurisdiction.⁵ That a court makes an erroneous ruling within its jurisdiction does not waive immunity. *See King v. Myers*, 973 F.2d 354, 357 (4th Cir. 1992). When there is clearly no jurisdiction over the subject-matter, and that is known to the judge, judicial immunity does not apply. *Bradley v. Fisher*, 80 U.S. 335, 351-52 (1871). "But where jurisdiction over the subject-matter is invested by law in the judge . . . the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case . . ." *Id.* at 352. An example of an action taken in the clear absence of jurisdiction is "if a probate judge, with jurisdiction over only wills and estates, should try a criminal case." *Stump v. Sparkman*, 435 U.S. 349, 357 n.7 (1978). Such a judge would not be immune from liability. *Id.* However, "if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune." *Id.*

Here, Marsh alleges that Judge Edwards deviated from the child support guidelines in ordering Marsh to pay child support, which his parents then paid of their own accord; ordered Marsh to attend reunification therapy; did not remove Dana Emmons as the court-appointed therapist; and did not order a child abuse investigation. These actions are clearly within Judge Edwards's jurisdiction as the judge presiding over the divorce proceeding. Even if these decisions

⁵ *Id.* at 31–41.

were erroneous, they would merely be taken in excess of jurisdiction. Judge Edwards retains absolute judicial immunity.

Marsh is correct in stating that absolute judicial immunity is not a bar to prospective injunctive relief. *Pulliam v. Allen*, 466 U.S. 522, 541 (1984). However, Marsh seeks monetary damages of \$117,000,000.00 from Defendants.⁶ Such a claim is barred by immunity.

Furthermore, § 1983 specifically prohibits federal courts from issuing injunctions against state court judges “unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C. § 1983. Marsh cannot demonstrate either of those exceptions.

Overall, because Judge Edwards’s actions were not taken in clear absence of jurisdiction, Judge Edwards is entitled to absolute judicial immunity against claims for monetary damages, and because Marsh has no basis to continue any other claim, all claims for relief should be dismissed against Judge Edwards. Adding Marsh’s parents as plaintiffs would be futile, as Judge Edwards would still retain absolute judicial immunity.

4. Marsh cannot bring a petition for habeas corpus because he is not in custody.

Although his argument is unclear, it seems that Marsh attempts to bring a petition for habeas corpus because he may be arrested in the future if he continues to fail to pay child support.⁷ “[H]abeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody.” *Toure v. Hott*, 458 F. Supp. 3d 387, 397 (E.D. Va. 2020) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). That the person be in custody when the petition is filed is a “requirement of the habeas corpus statute . . . designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual

⁶ Pl.’s Compl. 50, ¶ 239.

⁷ Pl.’s Opp’n 16, ¶ 41(f).

liberty.” *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California*, 411 U.S. 345, 351 (1973). This requirement is jurisdictional, and a federal court may not entertain the petition if the person is not in custody. *See Wilson v. Flaherty*, 689 F.3d 332, 336 (4th Cir. 2012). A criminal defendant is not in custody for habeas purposes “when the sentence imposed for the conviction has fully expired at the time his petition is filed.” *Id.* at 337. Moreover, “mere ‘speculative possibility’ of confinement is insufficient custody for the invocation of habeas corpus relief.” *Hilton v. Johnson*, 82 Fed. App’x 521, 522 (9th Cir. 2003); *see Hensley*, 411 U.S. at 351 (finding that habeas corpus is not an appropriate remedy “for cases in which the restraints on liberty are neither severe nor immediate.”).

Marsh is not currently in custody. As of June 26, 2022, Marsh had fully served the duration of his sentence for his federal crimes.⁸ It has not been alleged that there was a term or condition of that sentence that would impose another restraint on his liberty. And it seems that Marsh seeks habeas corpus relief not for this conviction but rather because he could be arrested for failing to pay child support. This is a mere speculative possibility of confinement and is insufficient to invoke habeas corpus relief. As Marsh is not in custody, this Court lacks the jurisdiction to consider a petition for habeas corpus from Marsh.

5. Abstention under *Younger* is appropriate in this matter.

Under the *Younger* abstention doctrine, a federal court must abstain from exercising jurisdiction over a case where there is an ongoing state action. *Younger v. Harris*, 401 U.S. 37, (1971). The policies underlying the *Younger* doctrine are “fully applicable to civil proceedings in which important state interests are involved.” *Moore v. Sims*, 442 U.S. 415, 423 (1979). *Younger* abstention is required when (1) state proceedings, judicial in nature, are pending; (2) the state

⁸ Pl.’s Compl. 6, ¶ 32

proceedings involve important state interests; and (3) the state proceedings afford adequate opportunity to raise the constitutional issue. *See Nat'l Home Ins. Co. v. State Corp. Comm'n of Com. of Va.*, 838 F. Supp. 1104, 1117–18. (E.D. Va. 1993); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

The *Younger* abstention factors are present here. Although it was not clear from Marsh's complaint, Marsh asserts that he has filed a petition to modify the child support order in Utah state court and that the Utah state court has yet to issue a ruling on this petition.⁹ Thus, if Marsh's assertions newly made in his opposition are true, there must be an ongoing state judicial proceeding. This state proceeding affords adequate opportunity to raise the issues Marsh brings. Marsh is concerned about the amount of child support he has been ordered to pay—a petition to modify the child support order would address these concerns and is the appropriate avenue by which to remedy these concerns. *See* Utah Code Ann. § 78B-12-210(9)(a). The state proceeding would also provide vehicles for Marsh's constitutional claims to be heard. *See Hahn v. Hahn*, 2018 UT App 135, ¶ 22, 427 P.3d 1195 (considering on appeal of an order on a petition to modify a father's argument that child support statutes violated his federal due process protections). And the case involves important state interests. Family relations, as is at issue here, is a “traditional area of state concern.” *Harper v. Pub. Serv. Comm'n of W.Va.*, 396 F.3d 348, 352 (4th Cir. 2005) (quoting *Moore v. Sims*, 442 U.S. 415, 435 (1979)). Accordingly, the Court should abstain and dismiss the case.

⁹ Pl.'s Opp. 1, ¶ 1.

CONCLUSION

For these reasons and those in the Memorandum Supporting Defendants Judge Edwards and the State of Utah's Motion to Dismiss, Defendants request that the Court grant their motion and dismiss Plaintiff's Complaint.

RESPECTFULLY SUBMITTED this 20th day of May 2024,

/s/ Madeline P. Olsen

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on May 20, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to the following:

Kirk Russel Marsh
Pro se Plaintiff
10036 Glenmere Rd.
Fairfax, VA 22032
kirkrussel@gmail.com

/s/ Besa Bucaj
Assistant Attorney General

EXHIBIT 20

458 The Order of the Court is stated below:

Dated: August 13, 2024
04:48:50 PM

/s/ MICHAEL S. EDWARDS
District Court Judge

SECOND JUDICIAL DISTRICT - FARMINGTON DISTRICT COURT
DAVIS COUNTY, STATE OF UTAH

In the matter of the marriage of LAUREN R MARSH, Petitioner, and KIRK RUSSEL MARSH, Respondent.	RULING Order of Dismissal - Petition to Modify Case No: 184701031 Judge: MICHAEL EDWARDS Date: August 13, 2024
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Based on a review of this file and Rule 4(b) Utah Rules of Civil Procedure, the Court orders the Petition to Modify filed in this case be dismissed for failure to serve the defendant within 120 days of filing the petition.

End Of Order - Signature at the Top of the First Page